

IN THE SUPREME COURT OF THE STATE OF DELAWARE

FREDERICK W. SMITH, JR.,	§
	§
Defendant Below-	§ No. 584, 2008
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for New Castle County
	§ Cr. ID 93007386DI
Plaintiff Below-	§
Appellee.	§

Submitted: January 9, 2009

Decided: March 5, 2009

Before **STEELE**, Chief Justice, **JACOBS**, and **RIDGELY**, Justices.

ORDER

This 5th day of March 2009, upon consideration of the appellant's opening brief, the State's motion to affirm, and the record below, it appears to the Court that:

(1) The appellant, Frederick W. Smith, Jr., filed this appeal from the Superior Court's denial of his motion for correction of an illegal sentence. The State has filed a motion to affirm the judgment below on the ground that it is manifest on the face of Smith's opening brief that his appeal is without merit. We agree and affirm.

(2) The record reflects that a Superior Court jury convicted Smith in November 1993 of two counts of second degree unlawful sexual

intercourse and one count each of third degree unlawful sexual penetration and third degree assault. This Court affirmed his convictions and sentence on direct appeal.¹ Since then, Smith has filed multiple unsuccessful motions for postconviction and habeas corpus relief. In October 2008, Smith filed a motion for correction of illegal sentence. In his motion, Smith argued that he was illegally sentenced for second degree unlawful sexual intercourse when the defendant's statement to police only supported a charge of third degree unlawful sexual intercourse. The Superior Court denied his motion. This appeal followed.

(3) It is well-established that the grounds for a motion seeking correction of an illegal sentence under Superior Court Criminal Rule 35(a) must be limited to alleged errors within the sentence itself, i.e., the sentence exceeds the statutory limits, violates double jeopardy, is ambiguous or inconsistent, or omits a required term.² A motion under Rule 35(a) is not an appropriate means to argue alleged errors in the underlying conviction.³ Smith's argument challenges the sufficiency of the evidence to support his convictions and cannot be considered under Rule 35(a).

¹ *Smith v. State*, 669 A.2d 1 (Del. 1995).

² *Brittingham v. State*, 705 A.2d 577, 578 (Del. 1998).

³ *Id.*

NOW, THEREFORE, IT IS ORDERED that the judgment of the
Superior Court is AFFIRMED.

BY THE COURT:

/s/Henry duPont Ridgely
Justice